

**CENTER FOR HEALTH
INFORMATION AND ANALYSIS**

AN OVERVIEW OF HEALTH BENEFIT MANDATES

JANUARY 29, 2014



center
for health
information
and analysis

INTRODUCTION

The Center for Health Information and Analysis (CHIA) is required to evaluate the impact of benefit mandate bills referred by legislative committees for review. These evaluations provide a medical efficacy analysis, an actuarial estimate of the effect that the proposed benefit mandate would have on the cost of health insurance, and cost estimates of potential state liability associated with mandating the benefit. CHIA produces reports on each reviewed benefit mandate proposal and performs a comprehensive retrospective review, typically every four years, of all mandates in effect.

WHAT ARE HEALTH BENEFIT MANDATES?

Health benefit mandates are laws passed by states that require state licensed health insurance carriers to include specific health care benefits in certain insured health benefit plans.¹ All states have such benefit mandates. Examples range from commonly offered services, such as emergency department services or diabetic supplies, to less standard benefits, such as in vitro fertilization and applied behavior treatment for autism.² While mandates may make insured health coverage more comprehensive, they also may make it more expensive. Thus, 29 states, including Massachusetts, have systematic processes in place to study the efficacy and cost of existing and proposed health benefit mandates.³

In Massachusetts, benefit mandates are governed by section 38C of Chapter 3 of the General Laws. When a legislator introduces a bill that proposes a benefit mandate, it is sent to a Joint Legislative Committee, usually the Committee on Financial Services, the Committee on Health Care Financing, the Committee on Public Health, or the Committees on Ways and Means. When reviewing a benefit mandate proposal, a Committee must hold a public hearing on the bill and then decide whether to report the bill favorably, unfavorably, or to report that the subject should be further studied. When a Joint Committee of the General Court or the House and Senate Committees on Ways and Means reports favorably on a mandated health benefit bill, a review or evaluation conducted by CHIA must be included. However, a Committee has the option to report favorably on a proposed health benefit mandate bill without including a review and evaluation by CHIA if the review is not produced within 45 days from when the Committee requested the review.

As of early of 2014, CHIA has published reviews of 31 proposed benefit mandate bills, 9 of which have become law. Most benefit mandates in Massachusetts require insurance carriers to cover specific services, treatments, or supplies for their plans' insured members. Another smaller set of provider-centered mandates requires insurers to cover otherwise covered services when provided by specific types of providers. Most provider-centered mandates require payers to pay licensed practitioners of a specified provider type when the provider type is licensed to provide a service that is covered by the payer.⁴ A list of proposed benefit mandate bills reviewed by CHIA can be found in **Appendix A**. A list of the health benefit mandates currently in effect in Massachusetts by type of mandate can be found in **Appendix B**.⁵

TO WHOM DO HEALTH BENEFIT MANDATES APPLY?

Health benefit mandate provisions typically apply to both individual and group insured health benefit plans offered by the following types of insurance carriers: commercial insurance companies licensed under M.G.L. c. 175; Blue Cross and Blue Shield of Massachusetts, Inc. (organized as both a nonprofit hospital service corporation under M.G.L. c. 176A and a medical service corporation under c. 176B); and Health Maintenance Organizations (HMOs) licensed under M.G.L. c. 176G. Many health benefit mandates also specifically apply to products offered through the Group Insurance Commission (GIC) governed by M.G.L. c. 32A. Benefit mandates require plans subject to health benefit mandate laws to cover members residing within the Commonwealth and may also require such plans to cover non-residents who have their principal place of employment in the Commonwealth.⁶

Although self-insured benefit plans are generally excluded due to federal ERISA (Employee Retirement Income Security Act) preemptions, GIC self-insured plans are sometimes explicitly included.⁷ State benefit mandates do not apply to the federal Employees Health Benefits Program⁸ and TRICARE.⁹ Medicare and Medicare HMO plans are also excluded as these policies are tied to Federal Medicare benefits and cover patient cost-sharing within the Medicare benefit structure. MassHealth, the Massachusetts Medicaid program, is also not subject to mandate requirements.¹⁰

HOW DOES CHIA REVIEW A PROPOSED HEALTH BENEFIT MANDATE?

When a proposed benefit mandate is referred to CHIA for review, CHIA works with an actuarial firm to evaluate the medical efficacy and cost impact. Beginning in 2014, CHIA intends to provide cost estimates of potential state liability associated with mandating the benefit.

CHIA's Information Sources

The party or organization on whose behalf the bill was filed may provide CHIA with any cost or utilization data that the party or organization has gathered. All interested parties supporting or opposing the bill may also provide CHIA with any information relevant to CHIA's review. CHIA may request data from insurers to whom the proposed bill applies, as necessary. Where possible, CHIA utilizes data from its databases, including the Acute Hospital Case Mix Databases and the All Payer Claims Database (APCD) to support CHIA's benefit mandate reviews.

Medical Efficacy Analysis

As part of the review, CHIA assesses the medical efficacy of the proposed benefit. This assessment includes the benefit's potential impact on the quality of patient care and the health status of the population. It also contains the results of any research demonstrating the medical efficacy of the treatment or service compared to alternative treatments or services or to not providing the treatment or service. CHIA does not declare any given service or provider type efficacious or not, but rather summarizes how the service is currently regarded in medical literature and by governmental or professional entities that recommend treatment. If the efficacy of a service or provider type is debated, CHIA reports, but does not attempt to resolve, the debate.

For provider-centered mandates, CHIA reviews whether the specific provider's services are widely covered or whether standard-setting entities, such as Medicare, pay for them. CHIA does not assess current thought on the clinical effectiveness of an entire profession. For mandates with a potentially significant effect on the health of individuals other than those covered by the benefit mandate, CHIA provides a description of the impact, but generally does not attempt to quantify it.¹¹

Cost Analysis

CHIA also assesses the financial impact of mandating the proposed benefit, which may include: the net impact of the mandate on carrier medical expense per member per month (PMPM); the net increase in premium PMPM; and the 5 year estimated impact of the proposed mandate on medical expenses and premiums. The cost analysis may also assess the proposed benefit's impact on utilization, such as the proposed benefit's effect on the appropriate or inappropriate use of the service; the extent to which the service might serve as an alternative for other services; and/or the extent to which coverage may affect the number and types of providers.

In conducting its financial impact analysis, CHIA follows a number of steps.¹²

- First, CHIA analyzes the bill to determine the types of insurance entities affected, the set of members affected (sometimes limited by age, diagnosis, and/or geography), the services mandated, and related policies affected. CHIA always defers to explicit bill language when performing the analysis. When ambiguities exist in the bill language, CHIA asks the legislature for clarification on legislative intent.
- Second, CHIA assesses the incremental impact of the proposed law by determining whether other state or federal mandates already require coverage and by reviewing current coverage practices—i.e., whether insurers cover the service voluntarily even without a mandate.
- Third, CHIA determines the PMPM estimates stemming from the incremental effect of the proposed law for the next five years:
 - A. CHIA estimates the proportion of the population affected (those with a condition who are treated, who use the specific services, or who use the specified provider), and what kind and how much treatment they receive.
 - B. CHIA determines the cost of each unit of estimated service.
 - C. After considering several perspectives, CHIA estimates the incremental service use due to the proposed mandate; the “net” effect equals the projected cost of the proposed benefit mandate less the costs already being incurred through existing mandates or voluntary coverage, trended forward.
 - D. CHIA assesses how treatment use will change if the proposed mandate changes cost to patients and how treatment cost will change over the coming five years given expected technology change.

State Liability for Health Benefit Mandates Under the ACA

Analysis of the cost associated with proposed state benefit mandates is also important in light of new requirements introduced by the Affordable Care Act (ACA). Starting in 2014, in addition to the analysis explicitly required by section 38C of Chapter 3, CHIA intends to provide cost estimates of potential state liability under the ACA associated with mandating the benefit.

In accordance with the ACA, all states must set an Essential Health Benefits (EHB) benchmark that all qualified health plans (QHPs), and those plans sold in the individual and small-group markets, must cover, at a minimum.¹³ Section 1311(d)(3)(B) of the ACA, as codified in C.F.R. § 155.170, explicitly permits a state to require QHPs to offer benefits in addition to EHB, provided that the state is liable to defray the cost of additional mandated benefits by making payments to or on behalf of individuals enrolled in QHPs. The state is not financially responsible for the costs of state-required benefits that are considered part of the EHB benchmark plan. State-required benefits enacted on or before December 31, 2011, (even if effective after that date) are not considered “in addition” to EHB and therefore will not be the financial obligation of the state.¹⁴

The policy regarding state-required benefits is effective as of January 1, 2014 and is intended to apply for at least plan years 2014 and 2015.¹⁵ Beginning in 2014, when reviewing proposed benefit mandates that are additions to EHB, CHIA intends to include cost estimates of potential state liability associated with mandating the health benefit. CHIA is currently working with the relevant state agencies with respect to the determination of a methodology for estimating this potential state liability.

CONCLUSION

The review of health benefit mandates balances the goal of ensuring adequate protection for health care consumers with the goal of managing increasing health care costs. The new requirements introduced by the ACA may impact the types and number of benefit mandate bills passed in Massachusetts. By evaluating the medical efficacy and the cost impacts, including the state liability, of proposed benefit mandate bills, CHIA will continue to provide stakeholders with neutral, reliable information.

APPENDIX A

HEALTH BENEFIT MANDATES REVIEWED BY CHIA

Proposed Benefit Mandates Reviewed and In Effect

- Scalp Hair Prosthesis
- Chiropractic Services
- Certain Prosthetic Devices
- Mental Health Parity
- Infertility Treatments
- Insurance Coverage for Autism

After December 31, 2011 (in addition to EHB)

- Cleft Palate and Cleft Lip
- Hearing Aids for Children
- Oral Cancer Therapy

Proposed Benefit Mandates Reviewed and Not In Effect

- Asthma Rates
- Senior Citizen Hearing Tests
- Equitable Coverage for Substance Abuse
- Marriage and Family Therapists
- Ectodermal Dysplasia
- Educational Psychologists
- Eating Disorders
- Children's Mental Health
- Prescription Drug Voice Synthesizers
- Vision Screening for Children
- Urea Cycle Disorders
- Prescription Drug Coverage
- Hearing Aids
- Childhood Vaccine Program and Immunization Registry
- Children's Medical Security Plan
- Colorectal Cancer Screenings
- Women's Health and Cancer Recovery
- Marriage and Family Therapy
- Craniofacial Disorders
- Care of Patients with Mitochondrial Disease
- Mastectomies
- Insurance Coverage for Devic's Disease

APPENDIX B

MASSACHUSETTS BENEFIT MANDATES BY TYPE

Services and Supplies

- Coverage for Autism
- Bone Marrow Transplants for Treatment of Breast Cancer
- Cardiac Rehabilitation
- Chiropractic Services
- Cleft Palate and Cleft Lip
- Clinical Trials (to Treat Cancer)
- Contraceptive Services
- Cytologic Screening (Pap Smear)
- Diabetes-Related Services & Supplies
- Early Intervention Services
- Hearing Aids for Children
- Hearing Screening for Newborns
- Home Health Care
- Hormone Replacement Therapy (HRT)
- Hospice Care
- Human Leukocyte Antigen Testing
- Hypodermic Syringes or Needles
- Infertility Treatment
- Lead Poisoning Screening
- Low Protein Food Product for Inherited Amino Acid and Organic Acid Diseases (PKU)
- Mammography
- Maternity Health Care (Including Minimum Maternity Stay)
- Mental Health Care
- Nonprescription Enteral Formulas
- Off-Label Uses of Prescription Drugs to Treat Cancer
- Off-Label Uses of Prescription Drugs to Treat HIV/AIDS
- Oral Cancer Therapy
- Preventive Care for Children Up to Age Six (Including Specific Newborn Testing)
- Prosthetic Devices
- Scalp Hair Protheses for Cancer Patients
- Speech, Hearing and Language Disorders
- Telemedicine Services

Providers (Mandated Coverage)

- Certified Nurse Midwives
- Certified Registered Nurse Anesthetists
- Nurse Practitioners
- Mental Health Providers: Licensed Psychiatrists, Psychologists, Independent Clinical Social Workers, Mental Health Counselors, and Nurse Mental Health Clinical Specialists

Providers (Nondiscrimination)

- Chiropractors
- Dentists
- Nurse Midwives
- Nurse Practitioners
- Optometrists
- Physician Assistants
- Podiatrists

REFERENCES

- 1 CHIA, COMPREHENSIVE REVIEW OF MANDATED BENEFITS IN MASSACHUSETTS REPORT TO THE LEGISLATURE (July 7, 2008), available at <http://www.mass.gov/chia/docs/r/pubs/mandates/comp-rev-mand-benefits.pdf>.
- 2 Health Affairs, *Essential Health Benefits*, HEALTH POLICY BRIEFS (May 2, 2013), available at http://www.healthaffairs.org/healthpolicybriefs/brief.php?brief_id=91.
- 3 California Health Benefits Review Program, OTHER STATES' HEALTH BENEFIT REVIEW PROGRAMS (Sept. 20, 2013), available at http://www.chbrp.org/docs/Survey_and_Analysis_of_Other_States_Health_Benefit_Review_Programs_2013_FINAL_092013.pdf.
- 4 Compass Health Analytics, STATE-MANDATED HEALTH INSURANCE BENEFITS AND HEALTH INSURANCE COSTS IN MASSACHUSETTS (Jan. 2013), available at <http://www.mass.gov/chia/docs/r/pubs/13/comprehensive-mandate-review-report-2013-1-10.pdf>.
- 5 For more information, see <http://www.mass.gov/ocabr/consumer/insurance/health-insurance/consumer-guides/mandatory-benefits-guide.html>.
- 6 Compass Health Analytics, STATE-MANDATED HEALTH INSURANCE BENEFITS AND HEALTH INSURANCE COSTS IN MASSACHUSETTS.
- 7 Self-insured policies are regulated under Federal ERISA legislation, not by the Massachusetts Division of Insurance, and thus are not subject to the mandate laws. Compass Health Analytics, STATE-MANDATED HEALTH INSURANCE BENEFITS AND HEALTH INSURANCE COSTS IN MASSACHUSETTS.
- 8 Randall R. Bovbjerg, LESSONS FOR HEALTH REFORM FROM THE FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM, pg. 2 (Aug. 2009), available at http://www.urban.org/uploadedpdf/411940_lessons_for_health_reform.pdf.
- 9 See 10 U.S.C. § 1103.
- 10 Compass Health Analytics, STATE-MANDATED HEALTH INSURANCE BENEFITS AND HEALTH INSURANCE COSTS IN MASSACHUSETTS.
- 11 *Ibid.*
- 12 See *ibid* for more information.
- 13 McDermott Will & Emery, ESSENTIAL HEALTH BENEFITS PROPOSED RULE: ADDITIONAL DETAIL WITH FEW SURPRISES (Nov. 30, 2012), available at <http://www.mwe.com/Essential-Health-Benefits-Proposed-Rule-Additional-Detail-with-Few-Surprises-11-30-2012/>.
- 14 Patient Protection and Affordable Care Act; Standards Related to Essential Health Benefits, Actuarial Value, and Accreditation; Final Rule, 37 Fed. Reg. 12834 (2013) (C.F.R. §§ 147, 155, 156), available at <http://www.gpo.gov/fdsys/pkg/FR-2013-02-25/pdf/2013-04084.pdf>. See the Proposed Rule at <http://www.gpo.gov/fdsys/pkg/FR-2012-11-26/pdf/2012-28362.pdf>. See also Massachusetts's EHB Benchmark Plan, available at <http://www.cms.gov/CCIIO/Resources/Data-Resources/Downloads/ma-state-required-benefits.pdf>.
- 15 Final Rule, *ibid.*

ACKNOWLEDGMENTS

CHIA Staff for this report:

Catherine West, MPA, Director of External Research Partnerships

Gretchen Losordo, JD, Senior Health Policy Analyst



center
for health
information
and analysis

For more information, please contact:

CENTER FOR HEALTH INFORMATION AND ANALYSIS

Two Boylston Street
Boston, MA 02116
617.988.3100

www.mass.gov/chia

Publication Number: 14-29-CHIA-01